

REMARKS

Status of the Claims

Claims 1-35 are pending in this application. Claims 1-35 are rejected. Claims 1-3, 6, 7-14, 16-22, 25, 6-28, 30-33, 35 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Publication No. 2003-0005447 to Rodriguez et al. ("Rodriguez") in view of U.S. Patent No. 5,400,402 to Garfinkle ("Garfinkle") further in view of U.S. Patent No. 5,331,353 to Levenson ("Levenson"). Claims 4 and 23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Rodriguez in view of Garfinkle further in view of Levenson and further in view of U.S. Patent No. 5,973,683 to Cragun ("Cragun"). Claims 5, 15, 24 and 29 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Rodriguez in view of Garfinkle further in view of Levenson and further in view of U.S. Patent No. 6,144,401 to Casement ("Casement"). Claim 34 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Rodriguez in view of Garfinkle further in view of Levenson and further in view of U.S. Patent No. 6,314,572 to Larocca ("Larocca"). Claims 1, 8, 9, 10, and 12 are provisionally rejected on the ground of nonstatutory double patenting over issued Patent No. 7,464,392. No claims are added, amended, or canceled. Applicants respectfully request reconsideration of this application.

Interview

On May 18, 2009, the Examiner and his supervisor granted an in-person interview to discuss the outstanding Office Action. Granting of interviews is always appreciated. The Examiner agreed to provide an interview summary. Although no definitive conclusions were reached, claims 1 and 33 were indicated as likely to have allowable subject matter. Much of the discussion revolved around claim 20 with Applicant explaining the position that Garfinkle was a poor candidate for combining to achieve the claimed invention.

Double Patenting

Claims 1, 8, 9, 10, and 12 are provisionally rejected on the ground of nonstatutory double patenting over issued Patent No. 7,464,392. Applicants believe the claims in their

currently amended form provide significant limitations not claimed in issued Patent No. 7,464,392. Claim 1, for example, includes some of the below limitations that are patentably distinct from issued Patent No. 7,464,392. These are not obvious variations. Reconsideration of the rejection is respectfully requested.

35 U.S.C. § 103 Rejection, Rodriguez et al., in view of Garfinkle, further in view of Levenson

The Office Action has rejected Claims 1-3, 6, 7-14, 16-22, 25, 6-28, 30-33 and 35 under 35 U.S.C. 103(a) as being unpatentable Rodriguez in view of Garfinkle further in view of Levenson. The Patent Office (the "Office") is charged with putting forth a *prima facie* showing of obviousness (MPEP § 2143). The Examiner "must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art" (MPEP 2141 III). Under the law as expressed by the Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 127 S.Ct. 1727, 82 USPQ2d 1385 (2007), "the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit ... '[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.'" (MPEP 2141 III). Applicants argue a *prima facie* case of obviousness has certain flaws in the Office Action that warrant reconsideration of the claims. Thus, Applicants respectfully traverse the § 103 rejections of the claims set forth in the Office action.

Teachings Missing from Cited References

Applicants believe Rodriguez, Garfinkle, and Levenson do not, either alone or in combination, teach or suggest the invention in the claims. More specifically, none of Rodriguez, Garfinkle, or Levenson teach or suggest at least the following limitations:

1) "preventing further viewings of the program if the number of viewings exceeds the defined program viewing limits for the one or more time periods and inserts a pre-selected program" as recited in claim 20; claim 1 recites a similar limitation;

2) "a first time period with a scheduled start time and a scheduled stop time" as recited in claim 20; claim 1 recites a similar recitation.

3) "determines whether a first time period spent budget based on the first number of viewings of the first program, the second number of viewings of the second program, the first point value, and the second point value exceeds a first time period viewing limit budget," as recited in claim 1;

4) "determining a roll over amount if the defined program viewing limit for the first time period exceeds the first number of viewings," as recited in claim 33; claim 1 recites a similar recitation; and

5) "the roll over amount being limited by a parental control rule," as recited in claim 1.

Summary of Rodriguez

Rodriguez discloses a system for presenting "bi-directional services that are purchasable for a period of time and rendered to a buying subscriber on an individualized basis as offered by the cable television system" (§[0006]). Rodriguez's system provides a basic PIN entry window "during the purchase of a session . . . to authenticate authorization and exercise parental control of purchase" (§[0143]).

Summary of Garfinkle

Garfinkle discloses a control system at the customer site that blocks access to video-on-demand ("VOD") program after it has been viewed a predetermined number of times or after a predetermined interval, or any combination thereof (Abstract). The time limit or the prescribed number of times are fixed by a central station or may be specified by the customer when he or she orders the program at purchase (col. 3, lines 39-42).

Summary of Levenson

Levenson discloses "an electronic control device . . . to limit the amount of time [an] appliance can be used" (Abstract). "The invention permits a television to be put under parental control in order to limit the viewing time of each child in the family to a predetermined "allowance," for example, ten hours per week. The allowance is automatically refreshed at the end of each week" (*id.*).

Missing Limitation 1: Inserting a Pre-Selected Program When Viewing Limits Exceeded

This limitation in claims 1 and 20 prevents further viewings of a program if the number of viewings exceeds a program viewing limit for a time period and then inserts a pre-selected program. In marked contrast, none of the cited reference teach or suggest inserting a pre-selected program when a viewing limit is reached. The Office Action acknowledges that Rodriguez does not explicitly disclose this recitation (Office Action, p. 5). The Office Action fails to point out where in any of the other cited references this limitation is taught or suggested. Furthermore, the Office Action provides no explicit reasoning as to why this limitation would be obvious. The Office Action has appeared to ignore completely this limitation. Hence, neither Rodriguez, Garfinkle, nor Levenson, either alone or in combination, teach or suggest "preventing further viewings of the program if the number of viewings exceeds the defined program viewing limits for the one or more time periods and inserts a pre-selected program."

Missing Limitation 2: Time Periods with Scheduled Start Times and Scheduled Stop Times

This limitation in claims 1 and 20 allows a parent to schedule start times and schedule stop times for the periods they want to impose parental control limits over program viewing. In contrast, none of the cited references teaches or suggests scheduled start times and scheduled stop times. The Office Action acknowledges that Rodriguez does not explicitly disclose this recitation (Office Action, p. 5). The Office Action appears to argue that Levenson may teach or suggest this limitation (*id.*, p. 12). The Office Action points out that Levenson discloses "the time remaining in a weekly time allowance is set to the initial value of the time allowance on midnight of day 7" (Office Action, p. 12, *quoting* Levenson, ¶ 61). From this disclosure, the Office Action infers that "each time period has a starting time and a stopping

time" (*id.*, p. 12). However, even if Levenson discloses starting and stopping times, this does not teach or suggest scheduled start times and scheduled stop times. Levenson merely discloses a system where a clock mechanism is initiated, after which "the device prompts for the weekly time allowance for [a] child" (Levenson, col.6, ll. 33 – 59). Levenson does not teach or suggest a system where a parent could actually schedule the start time and schedule the stop time. All the times are dictated by the system based on the time span of a week, and are thus not scheduled. Furthermore, because Levenson disclosure is limited to one week time periods, starting when the clock mechanism is initiated, Levenson also does not teach or suggest a system where multiple time periods with different scheduled start and scheduled stop times could be implemented. Thus, Levenson also does not teach or suggest the additional limitation in claim 1 of a "second time period comprising a second scheduled start time and a second scheduled stop time." Furthermore, neither Rodriguez nor Garfinkle, either alone or in combination with Levenson, teach or suggest this limitation. Thus, the cited references do not teach or suggest "preventing further viewings of the program if the number of viewings exceeds the defined program viewing limits for the one or more time periods and inserts a pre-selected program," as generally recited in claims 1 and 20.

Missing Limitation 3: Determining Spent Budget based on Program Viewings & Point Values

This limitation in claim 1 determines whether a time period spent budget exceeds a time period viewing limit budget. The spent budget is based on the number of viewings of a plurality of programs watched and point values assigned to each program. The Office Action acknowledges that Rodriguez does not explicitly disclose this recitation (Office Action, p. 5). The Office Action appears to argue that Garfinkle may disclose aspects of this recitation (*id.*, p. 6). For example, Garfinkle merely discloses "count[ing] the number of times video data at a certain address location has been accessed" (Office Action, p. 6, *quoting* Garfinkle, col. 4, ll. 8 – 10). However, Garfinkle does not teach or suggest assigning point values to each program. Furthermore, Garfinkle does not teach or suggest determining a spent budget based on the point values of multiple programs and the number of views of each of the multiple programs. Levenson also fails to teach or suggest these missing limitations as it is focused on limiting the

overall amount of time a child may watch TV during a week. While Levenson characterizes the limit on TV viewing time as an "allowance," Levenson's "allowance" does not teach or suggest anything related to point values associated with each program, counting viewings of multiple programs, or determining a spent budget based on the number of viewings of a plurality of programs watched and point values assigned to each program. Furthermore, neither Rodriguez nor Garfinkle teach or suggest these limitations. Hence, neither Rodriguez, Garfinkle, nor Levenson, either alone or in combination, teach or suggest these limitations found in claim 1.

Missing Limitation 4: Determining a Roll Over Amount Based on Number of Program Viewings and/or Point Values

These limitations in claims 1 and 33 determine a roll over amount for a time period based on the point value of programs and/or the number of viewings of programs. The Office Action acknowledges that Rodriguez does not explicitly disclose this recitation (Office Action, p. 5). While Levenson discloses the idea of a "roll over", this is a roll over based on a time allowance, where "the device may be changed so that the initial value of the weekly time allowance is added to the time remaining at day 7." (Office Action, p. 6, *quoting* Levenson, ¶[0061]). This does not teach or suggest a roll over based on point values for programs and/or number of viewings of programs for a time period. The Office Action states that it would have been obvious to combine the cited references "for the purpose of allowing a parent to set up different time allowance for their kids to watch television programs and allowing them to use the roll over amount technique to add unused time from one period to another" (Office Action, pp. 6 – 7). However, as the Office Action itself makes clear, the combined references would teach a time amount being rolled over. The cited references, either alone or in combination, do not teach a roll over amount based on point values for programs and/or number of viewings of programs. The simplistic nature of the cited references do not teach or suggest the more elaborate parental control system recited in claims 1 and 33 involving roll over amounts based on point values for programs and/or number of viewings of programs. Hence, neither Rodriguez, Garfinkle, nor Levenson, either alone or in combination, teach or suggest these limitations found in claims 1 and 33.

Missing Limitation 5: The Roll Over Amount is Limited by Parental Control Rule

This limitation in claim 1 allows for a roll over amount to be limited by a parental control rule. While Levenson may disclose the idea of a roll over amount of time (Levenson, col. 8, l. 13), Levenson does not teach or suggest a roll over amount that may be limited by a parental control rule. Levenson merely discloses a system either without or without a roll over amount. The Office Action fails to point out where in any of the cited references this limitation is taught or suggested. Furthermore, the Office Action provides no explicit reasoning as to why this limitation would be obvious. The Office Action has appeared to ignore completely this limitation. Thus, neither Levenson, Rodriguez, nor Garfinkle, either alone or in combination, teach or suggest "the roll over amount being limited by a parental control rule," as recited in claim 1.

Summary

The proposed combination of references does not teach or suggest the invention in the claims. The cited references, either alone or in combination, do not teach at least the following limitations: (1) "preventing further viewings of the program if the number of viewings exceeds the defined program viewing limits for the one or more time periods and inserts a pre-selected program"; (2) "a first time period with a scheduled start time and a scheduled stop time"; (3) "determines whether a first time period spent budget based on the first number of viewings of the first program, the second number of viewings of the second program, the first point value, and the second point value exceeds a first time period viewing limit budget"; (4) "determining a roll over amount if the defined program viewing limit for the first time period exceeds the first number of viewings"; and (5) "the roll over amount being limited by a parental control rule."

In addition to the missing limitations in the proposed combination, Applicants believe Garfinkle is not suited for a combination it is directed to VOD and sets all viewing limits

at purchase without providing for a combined interface or later curtailment. Garfinkle in a combination would not achieve the invention of claims.

Applicants respectfully request consideration of the 35 U.S.C. § 103(a) rejection to independent claims 1, 20, 33 and their respective dependent claims 2,3, 6, 7-14, 16-19, 21, 22, 25, 6-28, 30-32, and 35.

35 U.S.C. § 103 Rejection, Rodriguez et al., in view of Garfinkle, further in view of Levenson, Cragun, Casement, and Larocca.

Claims 4 and 23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Rodriguez in view of Garfinkle further in view of Levenson and further in view of U.S. Patent No. 5,973,683 to Cragun ("Cragun"). Claims 5, 15, 24 and 29 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Rodriguez in view of Garfinkle further in view of Levenson and further in view of U.S. Patent No. 6,144,401 to Casement ("Casement"). Claim 34 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Rodriguez in view of Garfinkle further in view of Levenson and further in view of U.S. Patent No. 6,314,572 to Larocca ("Larocca").

Dependent claims 4, 5, 15, 23, 24, 29, and 34 are allowable for at least the reasons that their respective parent claims are allowable. Applicants thus respectfully request reconsideration of the 35 U.S.C. § 103(a) rejections of dependent claims 4, 5, 15, 23, 24, 29, and 34.

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Amdt. dated May 18, 2009
Reply to Office Action of December 19, 2008 (the "Office
Action")


PATENT

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,



Thomas D. Franklin
Reg. No. 43,616

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 303-571-4000
Fax: 415-576-0300
Attachments
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